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For Petitioner California Sportfishing Protection Alliance

BEFORE THE STATE WATER RESOURCES CONTROL BOARD

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|-------------------------------------------------------------|---|----------------------------|
| In the Matter of Waste Discharge Requirements for |) | |
| University of California, Center For Aquatic Biology |) | PETITION FOR REVIEW |
| and Aquaculture, Yolo and Solano Counties, |) | |
| California Regional Water Quality Control Board – |) | |
| Central Valley Region Order No. R5-2006-0126; |) | |
| NPDES No. CA0083348 |) | |

Pursuant to Section 13320 of California Water Code and Section 2050 of Title 23 of the California Code of Regulations (CCR), California Sportfishing Protection Alliance (“CSPA” or “petitioner”) petitions the State Water Resources Control Board (State Board) to review and vacate the final decision of the California Regional Water Quality Control Board for the Central Valley Region (“Regional Board”) in adopting Waste Discharge Requirements (NPDES No. CA0083348) University of California, Center For Aquatic Biology and Aquaculture on 8 December 2006. *See* Order No. R5-2006-0126.

The issues raised in this petition were raised in timely written comments and direct testimony.

1. NAME AND ADDRESS OF THE PETITIONERS:

California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, California 95204
Attention: Bill Jennings, Executive Director

2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY ORDER OR RESOLUTION OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE PETITION:

Petitioner seeks review of Order No. R5-2006-0126, Waste Discharge Requirements (NPDES No. CA0083348) for University of California, Center For Aquatic Biology and Aquaculture. Copies of the orders adopted by the Regional Board at its 8 December 2006 Board meeting are attached hereto as Attachments A.

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO ACT:

8 December 2006

4. A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION OR FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER:

CSPA submitted a detailed comment letters on 21 September 2006 and 24 November 2006. This letter, the following comments and oral remarks presented during the 8 December 2006 public hearing set forth in detail the reasons and points and authorities why CSPA believes the Order fails to comport with statutory and regulatory requirements. The specific reasons the adopted Orders are improper are:

- A. The Discharger has submitted an incomplete RWD and in accordance with Federal Regulations 40 CFR 122.21 (e) and 122.4 the Regional Board should not have adopted an incomplete and non-protective Order.

Federal Regulation, 40 CFR 122.21(e) states in part that: "The Director shall not issue a permit before receiving a complete application for a permit except for NPDES general permits. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction. In this case Order Finding No. 23 clearly states that the Regional Board required, on numerous occasions, that the Discharger characterized the wastewater discharge for priority pollutants, specifically California Toxics Rule (CTR) and National Toxics Rule (NTR) constituents. The Order, Finding No. 23, clearly states that the

Discharger did not comply with Regional Board's requirements for submittal of data, therefore confirms that the application for permit renewal is incomplete. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity." The California Toxics Rule (CTR)(40 CFR 131, Water Quality Standards) contains water quality standards applicable to this wastewater discharge. The final due date for compliance with CTR water quality standards for all wastewater dischargers in California is May 2010. The State's Policy for Implementation of Toxics standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP), Section 1.2, requires wastewater dischargers to provide all data and other information requested by the Regional Board before the issuance, reissuance, or modification of a permit to the extent feasible. The Discharger did not submit a characterization of the wastewater discharge in terms of priority pollutants. State Report of Waste Discharge form 200 is required as a part of a complete Report of Waste Discharge. Form 200, part VI states that: "To be approved, your application must include a complete characterization of the discharge." The Federal Report of Waste Discharge forms also require a significant characterization of a wastewater discharge. Therefore for priority pollutants, there is no information the Order fact sheet that adequately discusses a reasonable potential analysis in accordance with Federal Regulation 40 CFR 122.44. The application for permit renewal is incomplete and in accordance with 40 CFR 122.21(e) the Regional Board shall not issue a permit.

The Regional Board has failed to take any enforcement actions for failing to adequately characterize the wastewater discharge to surface waters. Order, Provision No. 3, requires submittal of a final study report of priority pollutants within 21 months of adoption of the Order. Assuming that the Regional Board intends to consider adoption of the permit in October 2006, the final report would be due in June 2008. Final compliance with CTR water quality standards must be accomplished by May 2010, less than two years later. We have heard wastewater Dischargers testify time and again at Regional Board hearings that 5-year compliance schedules are not adequate to conduct a CEQA analysis, plan, design and construct treatment processes. The Order schedule is far too lax and will not adequately bring the discharge into compliance within the allowable time frame.

Order Finding No. 10 assesses that the wastewater discharge may reasonably contain organic nitrogen and organic phosphorus and toxic pollutants such as copper, lead, nickel and zinc. As stated in the above paragraphs the Discharge has not adequately characterized the wastewater discharge, the Discharger has therefore not submitted a complete application for permit renewal. Since the Regional Board has issued several notices that the Discharge is non-compliant for characterizing the discharge for CTR and NTR constituents, the Executive Officer could not have found the application to be complete in accordance with 40 CFR 122.21(e). The application for permit renewal is incomplete and in accordance with 40 CFR 122.21(e) the Regional Board shall not issue a permit. Also, Federal Regulation 40 CFR 122.4 states that no permit shall be issued for any discharge when the conditions of the permit do not provide for compliance with the applicable requirements of the CWA, the Regional Board cannot assure that the Order complies with the CTR, the NTR, the Basin Plan or the SIP.

- B. The Basin Plan, Implementation, Page IV-24-00, prohibits the discharge of wastewater to low flow streams as a permanent means of disposal and requires the evaluation of land disposal alternatives, Implementation, Page IV-15.00, Policies and Plans (2) Wastewater Reuse Policy.

The Basin Plan, Implementation, Page IV-24-00, Regional Water Board prohibitions, states that: “Water bodies for which the Regional Water Board has held that the direct discharge of waste is inappropriate as a permanent disposal method include sloughs and streams with intermittent flow or limited dilution capacity.” The Order characterizes the receiving stream as low flow, or ephemeral, with no available dilution. The Order does not discuss any efforts to eliminate the discharge to surface water and compliance with the Basin Plan Prohibition. Federal Regulation 40 CFR 122.4 states that no permit shall be issued for any discharge when the conditions of the permit do not provide for compliance with the applicable requirements of the CWA and are inconsistent with a plan or plan amendment. The permit must be amended to require that the Discharger develop a workplan to eliminate the wastewater discharge to surface water in accordance with the Basin Plan.

This discharge can, in accordance with the cited Basin Plan Prohibition, reasonably be eliminated by diverting flows to the campus wastewater treatment plant where it will receive a tertiary level of treatment reducing the threat of discharging problematic levels of pollutants as was determined in the reasonable potential analysis and the yet to be conducted priority pollutant assessment. The University of California at Davis is also a major land holder and in accordance with the Basin Plan, Implementation, Page IV-15.00, Policies and Plans (2) Wastewater Reuse Policy, the Discharger was required as a part of the Report of Waste Discharge to submit a land disposal and reuse analysis – which does not appear to have been submitted since it is not discussed in the Order. The permit must be amended to require that the Discharger develop a workplan to eliminate the wastewater discharge to surface water in accordance with the Basin Plan.

The Order states that the wetlands is a part of the treatment process, however contains no supporting documentation, the wetlands is a water of the state and the Order is not sufficient, in accordance with Federal Regulation 40 CFR 122.4, to assure compliance with the applicable requirements of the CWA.

The Order, Finding No. 3, states that the wetlands is a part of the treatment process and is therefore not considered a water of the state. The Permit however contains no supporting documentation that any “treatment” occurs in the wetlands. Actually, from reading the Order and Fact Sheet there does not appear to be any treatment process at this facility. If the wetlands is providing removal of pollutants, i.e. “treatment” the permit should verify such, otherwise it appears that the wetlands solely provides a means of wastewater disposal by evaporation, evapotranspiration and percolation and should properly be regulated as a water of the state. As a water of the state, Federal Regulation 40 CFR 122.4 requires that no permit shall be issued for the discharge since the Order does not provide for compliance with the applicable requirements of the CWA and

include Effluent Limitations, Receiving Water Limitations and Prohibitions sufficient to protect the beneficial uses of the receiving water (the wetlands).

- D. The Order states that wastewater from the aquatic disease laboratory is discharged to an isolated evaporation percolation pond for disposal and there are numerous other discharges to unlined ponds and the wetlands, whoever the permit fails to adequately monitor groundwater quality and it cannot be determined if the discharge degrades groundwater quality and is in compliance with the Antidegradation Policy (Resolution NO. 69-16).

The Order, Finding No. 6, states that the DFG requires the Discharger chlorinate the wastestream discharged to the “isolated evaporation percolation pond”. There is clearly organic matter in the wastestream. Chlorine blended with organic matter can form trihalomethanes. The Discharger is not required to monitor the groundwater for trihalomethanes. It is not possible with the currently proposed groundwater monitoring to determine if the discharge of wastewater causes or contributes to exceedance of a water quality standard or objective.

The groundwater monitoring program requires that total nitrogen be “calculated”. Yet there are no parameters being measured from which to “calculate” total nitrogen. Ammonia, nitrate and organic nitrogen levels are not required to be sampled which could be used to “calculate” total nitrogen levels. Order Finding No. 10 states that discharges from fisheries contain ammonia nitrogen and organic nitrogen. Ammonia and nitrates also have water quality standards, whereas total nitrogen does not, therefore it would be significantly more reasonable to sample for these constituents to determine if the discharge of wastewater causes or contributes to exceedance of a water quality standard or objective.

It is common knowledge that hexavalent chromium exists in groundwater in areas around the Davis Campus. The Discharger utilizes groundwater in the fishery. The Discharger is not required to sample the groundwater for hexavalent chromium. It is not possible with the currently proposed groundwater monitoring to determine if the discharge of wastewater causes or contributes to exceedance of a water quality standard or objective.

Order Finding No. 10 states that discharges from fisheries contain phosphorus. The Discharger is not required to sample for phosphorus. It is not possible with the currently proposed groundwater monitoring to determine if the discharge of wastewater causes or contributes to exceedance of a water quality standard or objective.

Order Finding No. 10 states that discharges from fisheries contain fecal coliform. The Discharger is not required to sample the groundwater for fecal coliform. It is not possible with the currently proposed groundwater monitoring to determine if the discharge of wastewater causes or contributes to exceedance of a water quality standard or objective.

Order Finding No. 10 states that discharges from fisheries high levels of BOD. The Discharger is not required to sample the groundwater for BOD. It is not possible with the currently proposed groundwater monitoring to determine if the discharge of wastewater causes or contributes to exceedance of a water quality standard or objective.

The Order contains surface water Effluent Limitations for cadmium, chromium and selenium based on the fact that these constituents presented a reasonable potential to exceed water quality standards. The Discharger is not required to sample the groundwater for cadmium, chromium and selenium. It is not possible with the currently proposed groundwater monitoring to determine if the discharge of wastewater causes or contributes to exceedance of a water quality standard or objective.

Order Finding No. 11 states that discharges from this facility can contain mercury, cadmium, pyrethroids, microcystin, beta naphthoflavone, estradiol, chloropyrophos, florfenicol and chloramines T. The Discharger is not required to sample the groundwater for mercury, cadmium, pyrethroids, microcystin, beta naphthoflavone, estradiol, chloropyrophos, florfenicol and chloramines T. It is not possible with the currently proposed groundwater monitoring to determine if the discharge of wastewater causes or contributes to exceedance of a water quality standard or objective.

The proposed groundwater sampling is significantly deficient. All of the constituents listed have a reasonable potential to migrate to groundwater when the wastewater is allowed to percolate in the unlined ponds. Lining of the wastewater disposal ponds may be best practicable treatment and control (BPTC) of the discharge. An antidegradation policy analysis, including review of BPTC practices, has not been conducted for this facility and is not possible with the limited monitoring program required by the Order. Sampling for trihalomethanes, ammonia, nitrate, organic nitrogen, chromium, hexavalent chromium, phosphorus, fecal coliform, BOD, cadmium, selenium, mercury, cadmium, pyrethroids, microcystin, beta naphthoflavone, estradiol, chloropyrophos, florfenicol and chloramines T must be added to the monitoring requirements to determine if the discharge degrades groundwater quality and is in compliance with the Antidegradation Policy (Resolution NO. 69-16).

- E. The use of Best Management Practices (BMPs) does not conform to the Federal Regulations (40 CFR 122.44(k)) when numeric effluent limitations are feasible.

The Order, Findings 41, 42 and 43 and Section E, Best Management Practices, require the Discharger develop and implement BMPs. Order Finding No. 41 discusses the Federal Regulation 40 CFR 122.44 (k), but in accordance with this regulation fails to cite the regulation in full and fails to discuss that numeric effluent limitations are feasible. While the BMPs in Section E appear to be reasonable if limiting the amount of fish food discharged to surface water is the sole intent, however the Order does not discuss whether specific effluent limitations have been eliminated from the permit because of the application of the BMPs, why such effluent limitations would not be feasible and to discuss the discharge alternatives discussed above (discharge to the sanitary sewer or land

disposal). The Order as presented is incomplete and must be modified to discuss whether the proposed application of BMPs have been used as an alternative to the inclusion of effluent limitations and the rationale if so in accordance with Federal Regulation 40 CFR 124.8 by failing to include in the Fact Sheet the basis for the use of BMPs.

Order Provision No. 5 requires at the end of the first paragraph that the Discharger must perform listed tasks prior to use of listed chemicals and then states: "...or any other chemical or antibiotic that may enter the wastewater discharge..." "Any other chemicals or antibiotics may exceed water quality standards or objectives. An NPDES permit may not be issued that allows uncharacterized wastewater discharges that may exceed water quality standards or objectives and degrade the beneficial uses of the receiving stream. Federal Regulation, 40 CFR 122.4 (a), (d) and (g) require that no permit may be issued when the conditions of the permit do not provide for compliance with the applicable requirements of the CWA, or regulations promulgated under the CWA, when imposition of conditions cannot ensure compliance with applicable water quality requirements and for any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of the CWA. Since the Order allows for "any other chemical or antibiotic" to potentially be discharged, there is no condition in the permit that assures compliance with quality standards or objectives and therefore in accordance with 40 CFR 122.4, the Regional Board cannot issue the Permit as currently proposed. Effluent Limitations for "other chemicals or antibiotics" are feasible, unless clearly shown otherwise, and therefore the Order does comply with Federal Regulation 40 CFR 122.44 (k).

- F. The Order contains an Effluent Limitation for acute toxicity that allows mortality that exceeds the Basin Plan water quality objective and does not comply with Federal regulations, at 40 CFR 122.44 (d)(1)(i).

Federal regulations, at 40 CFR 122.44 (d)(1)(i), require that limitations must control all pollutants or pollutant parameters which the Director determines are or may be discharged at a level which will cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality. The Water Quality Control Plan for the Sacramento/ San Joaquin River Basins (Basin Plan), Water Quality Objectives (Page III-8.00) for Toxicity is a narrative criteria which states that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life. This section of the Basin Plan further states, in part that, compliance with this objective will be determined by analysis of indicator organisms.

The Order requires that the Discharger conduct acute toxicity tests and states that compliance with the toxicity objective will be determined by analysis of indicator organisms. However, the Tentative Permit contains a discharge limitation that allows 30% mortality (70% survival) of fish species in any given toxicity test.

For an ephemeral or low flow stream, allowing 30% mortality in acute toxicity tests allows that same level of mortality in the receiving stream, in violation of federal

regulations and contributes to exceedance of the Basin Plan's narrative water quality objective for toxicity. Accordingly, the Order must be revised to prohibit acute toxicity in accordance with Federal regulations, at 40 CFR 122.44 (d)(1)(i).

- G. The Order does not contain Effluent Limitations for chronic toxicity and therefore does not comply with Federal regulations, at 40 CFR 122.44 (d)(1)(i).

Federal regulations, at 40 CFR 122.44 (d)(1)(i), require that limitations must control all pollutants or pollutant parameters which the Director determines are or may be discharged at a level which will cause, or contribute to an excursion above any State water quality standard, including state narrative criteria for water quality. The Water Quality Control Plan for the Sacramento/ San Joaquin River Basins (Basin Plan), Water Quality Objectives (Page III-8.00) for Toxicity is a narrative criteria which states that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life. The Tentative Permit states that: "...to ensure compliance with the Basin Plan's narrative toxicity objective, the discharger is required to conduct whole effluent toxicity testing..." However, sampling does not equate with or ensure compliance. The Tentative Permit requires the Discharger to conduct an investigation of the possible sources of toxicity if a threshold is exceeded. This language is not a limitation and essentially eviscerates the Regional Board's authority, and the authority granted to third parties under the Clean Water Act, to find the Discharger in violation for discharging chronically toxic constituents. An effluent limitation for chronic toxicity must be included in the Order. In addition, the Chronic Toxicity Testing Dilution Series should bracket the actual dilution at the time of discharge, not use default values that are not relevant to the discharge. Accordingly, the Order must be revised to prohibit chronic toxicity in accordance with Federal regulations, at 40 CFR 122.44 (d)(1)(i).

- H. The Order, Finding No. 24, states that there is a reasonable potential for mercury concentrations to exceed water quality standards and that an Effluent Limitation is included in the permit. There is no effluent limitation included in the Order for mercury. Failure to include an Effluent Limitation in an NPDES permit for a constituent when there is a reasonable potential for a constituent to exceed a water quality standard violates Federal Regulation 40 CFR 122.44.

- I. The Discharger adds the antibiotic Oxytetracycline to fish food, which in turn is discharged to surface waters. The Order does not contain an Effluent Limitation for Oxytetracycline which violates Federal Regulation, 40 CFR 122.4 (a), (d) and (g).

There is significant literature recently regarding the wastewater discharge of antibiotics and their significant impact on the environment. The Order, Finding No. 27, estimates the maximum concentration of the antibiotic Oxytetracycline discharged from

this facility is 0.2 mg/l; however the permit contains no limitations that preclude the Discharger from using and discharging higher concentrations.

Finding No. 27 cites the California Department of Fish and Game (DFG) as the source of information based on tests solely on *ceriodaphnia dubia* (water flea) showing that a 40.4 mg/l and 48 mg/l concentration of Oxyeteracycline is safe for survival and reproduction, respectively. There is no indication that more than one test was run to determine the accuracy or statistical variability of the test. There is no indication of whether multiple species were used to determine the most sensitive. There is no indication that the most sensitive aquatic life from Putah Creek was used in the DFG test. There is no reason to believe that the sampling was in any way equivalent to the rigorous investigations that are necessary to develop protective criteria. There is no indication of whether DFG, as a Department, recommends the number developed by their Pesticide Unit as being protective of all aquatic life and whether DFG would recommend the level as safe for wastewater discharges. The DFG test has not been peer reviewed nor issued for public review or comment. Order Finding No. 27 states that: “The Regional Water Board considered the results of acute and chronic life toxicity conducted by the DFG Pesticide Unit for Oxyeteracycline used in an immersion bath treatment.” We cannot recall any specific Regional Board hearing on the matter, but it may have been “considered” in the adoption of an uncontested permit on the Board’s consent calendar without significant review. The impacts from antibiotics, the reduction in bacterial populations, and the development of resistance by pathogenic bacteria and genotoxicity would not be detected by the kind of analysis conducted by DFG.

There are no limitations in the Order that limit the concentration of Oxyeteracycline discharged from the Discharger’s facility. The Discharger could also reasonably eliminate the surface water discharge of Oxyeteracycline by isolating this portion of the wastestream to their “isolated evaporation percolation pond” for land disposal. There is also no verification that the numbers developed by DFG are in any way safe for surface waters and aquatic life beneficial uses. The allowance for the Discharger to use this antibiotic with limitation is contrary to Federal Regulation, 40 CFR 122.4 (a), (d) and (g) require that no permit may be issued when the conditions of the permit do not provide for compliance with the applicable requirements of the CWA, or regulations promulgated under the CWA, when imposition of conditions cannot ensure compliance with applicable water quality requirements and for any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of the CWA.

- J. The Discharge Specifications/Pond Disposal Limitations Section of the Order fails to specify the “design seasonal precipitation” as 100 year.

The Discharge Specifications/Pond Disposal Limitations (1)(f) and (3)(g) fail to specify the “design seasonal precipitation” as 100-year, which is the typical design standard prescribed by the Central Valley Regional Board. The permit should be amended to specify the design season to prevent overflows from the ponds.

- K. Order Provision No. 3 requires that the Discharge conduct an assessment of CTR and NTR compliance which conflicts with the language in the Monitoring and Reporting Program, which only requires sampling for priority pollutant metals.

Order Provision No. 3 requires that the Discharge conduct an assessment of CTR and NTR compliance. This conflicts with the language in the Monitoring and Reporting Program, Priority Pollutant Metals Monitoring, which states that: “The SIP states that the Regional Water Boards will require periodic monitoring (at least once prior to issuance and re-issuance of a permit) for pollutants with applicable criteria or objectives and no effluent limitations have been established in an existing permit.

The Regional Water Board has determined that, based on priority pollutant data collected from this facility and similar aquaculture facilities, discharge of priority pollutants other than metals is unlikely.” The above comments clearly identify a significant list of constituents beyond metals that are in the discharge. There is no information presented anywhere in the Order that supports that metals are the only constituents of concern from this facility. To the contrary, the above comments clearly identify a significant list of constituents beyond metals that are in the discharge. A partial list of the constituents discussed above that appear to be problematic are trihalomethanes, ammonia, nitrate, organic nitrogen, chromium, hexavalent chromium, phosphorus, fecal coliform, BOD, cadmium, selenium, mercury, cadmium, pyrethroids, microcystin, beta naphthoflavone, estradiol, chloropyrophos, florfenicol and chloramines T, as detailed elsewhere in these comments.

- L. The Effluent Limitation for formaldehyde is not protective of the beneficial uses of the receiving stream and is in excess of the Basin Plan chemical constituents water quality objective in violation of Federal Regulation 40 CFR 122.44.

The Fact Sheet, page 13 Water Quality Based Effluent limitations (No. 2), fifth paragraph, lists that the US EPA IRIS reference dose recommended limitation for drinking waters is 1.4 mg/l for formaldehyde, the US EPA Drinking Water Health Advisory is 1.0 mg/l and the taste and odor threshold is 0.6 mg/l. The Regional Board staff have proposed instead to base the Effluent Limitation on a bioassay conducted by DFG. This is apparently based on the incorrect statement that: “The taste and odor threshold for formaldehyde has been established as a 30-day average effluent limitation based on the Basin Plan’s chemical constituents objective.” There is no justification for stating that the taste and odor objectives are 30-day averages. Unlike drinking water standards based on risk assessments, taste and odor impacts occur instantaneously and under the chemical constituents objective should be modified accordingly. Taste and Odor is a surface water quality objective in the Basin Plan. Failure to protect the Taste and Odor water quality objective by failure to utilize the US EPA recommended taste and odor objective for formaldehyde would be a violation of Federal Regulation 40 CFR 122.44.

- M. The Order does not contain an Effluent Limitation for Electrical Conductivity (EC) that protects the Irrigated Agriculture beneficial use of the Receiving Stream in violation of designated waste state laws (CWC 13173), CCR Title 27 (20210) and federal regulations (40 CFR 122.45 (h) and (f)(iii)).

The first paragraph of Order Finding No. 28 states that the Discharger intentionally adds salt up to 35,000 mg/l for various reasons at the fishery. This controllable use of salt is maintained in separate isolated baths and can reasonably be isolated from the remainder of the wastestream. The isolated salt baths are a designated waste in accordance with Title CCR 27. The designated waste must be kept out of the principal wastestream. The Order would allow the discharge of a designated waste to surface water in violation of CCR Title 27. The isolated salt baths should be prevented from entering the wastestream. Federal Regulations, 40 CFR 122.45 (h) allows establishment of effluent limitations for internal wastestreams when the discharge would be significantly diluted at the point of discharge, which is the case here. Federal Regulations, 40 CFR 122.45 (f)(iii) require permit conditions be established to ensure that dilution is not used as a substitute for treatment. The designated salt waste from the isolated baths is diluted with the remainder of the wastestream prior to discharge contrary to Federal Regulations.

The Order, Finding No. 28, Salinity, cites UN Irrigation Drainage Paper No. 29 (Ayers and Westcot, 1985) as recommending that EC concentrations above 700 umhos/cm will reduce crop yields for sensitive plants. The original tentative Permit contained an Effluent Limitation for EC at 700 umhos/cm based on the Ayers and Westcot recommendation. Irrigated agriculture is a beneficial use of the receiving stream. The Order has been changed from the original 700 umhos/cm to 800 umhos/cm. There is no information in the Order, which indicates that that 800 umhos/cm is protective of irrigated agriculture. To the contrary, the Order continues to cite the Ayers and Westcot recommendation of 700 umhos/cm for EC as necessary to protect sensitive crops. California Water Code, section 13377, requires that: "Notwithstanding any other provision of this division, the state board and the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance." The Order is not protective of the irrigation of sensitive crops and the beneficial use of irrigated agriculture in violation of CWC 13377.

The Order, Finding No. 28, states that the source water to the UCD Fisheries is a combination of groundwater and surface water from Lake Berryessa. The combined source waters are well below the recommended 700 umhos/cm EC concentration. The addition of salt, as stated above should be handled as a designated waste, but in any case is controllable by the Discharger. The Fact Sheet, Table 1, lists the effluent EC values for both UCD fisheries. Of the 76 effluent EC concentrations listed, only two exceed 700

umhos/cm. Since the source water is well below 700 umhos/cm; the salt waste is easily controllable; the Discharger has not extensively exceeded the 700 umhos/cm level; and, the proposed 800 umhos/cm concentration is not protective of beneficial uses, the 700 umhos/cm EC effluent limitation should be reestablished.

The Order, Finding 28, states that because EC is related to total dissolved solids (TDS) and chloride, the limitation for EC will result in the presence of less TDS and chloride. Since the EC level was adjusted to allow the Discharger to discharge at the current level, with no action necessary to achieve compliance, the statement is incorrect. The discharge is at the status quo and will not result in less TDS or chloride. The statement in the Order is incorrect and should be removed.

There is no information in the Order regarding the concentrations of TDS or chloride. Inclusion of an Effluent Limitation for EC does not assure that water quality standards for TDS and chloride will be met. TDS and chloride are not a constant and are dependant on the characterization of the individual wastestream. There is no information in the Order that indicates that water quality standards for TDS and chloride will be achieved. The Order should be amended to require a complete characterization of the wastestream. The wastestream has not been characterized for TDS and chloride; therefore the Report of Waste Discharge was incomplete. Federal Regulation, 40 CFR 122.21(e) states in part that: “The Director shall not issue a permit before receiving a complete application for a permit except for NPDES general permits. In accordance with 40 CFR 122.21 (e) and (h) and 124.3 (a)(2) the Regional Board shall not adopt the Order without first a complete application, in this case for industrial or commercial facilities, for which the permit application requirements are extensive. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.” State Report of Waste Discharge form 200 is required as a part of a complete Report of Waste Discharge. Form 200, part VI states that: “To be approved, your application must include a complete characterization of the discharge.” The Federal Report of Waste Discharge forms also require a significant characterization of a wastewater discharge. Federal Application Form 2A, which is required for completion of a Report of Waste Discharge for municipalities, Section B.6, requires that Dischargers whose flow is greater than 0.1 mgd, must submit sampling data for ammonia, chlorine residual, dissolved oxygen, total kjeldahl nitrogen, nitrate plus nitrite nitrogen, oil and grease, phosphorus and TDS. Federal Regulation, 40 CFR 122.21(e) states in part that: “The Director shall not issue a permit before receiving a complete application for a permit except for NPDES general permits.

- N. The reduction of monitoring requirements in the Order is unjustified since the wastestream has not been adequately characterized.

In comments to the original tentative Permit, we cited Findings that clearly showed that the discharge had not been characterized. The Discharger has been in

constant noncompliance for failing to submit required sampling of the discharge as is documented in the Order Findings. The Discharger has not monitored groundwater to determine if their wastewater discharge has degraded groundwater quality. It is absurd that the Regional Board would even consider renewing this Order not knowing the water quality impacts which can only be determined by a complete characterization of the discharge. Instead, the Order has been revised to reduce the monitoring that was originally required. There is no justification for the reduced monitoring. The Regional Board should be pursuing enforcement for failing to conduct required monitoring to characterize the discharge, not rewarding a recalcitrant Discharger.

5. THE MANNER IN WHICH THE PETITIONERS ARE AGGRIEVED.

CSPA is a non-profit, environmental organization that has a direct interest in reducing pollution to the waters of the Central Valley. CSPA's members benefit directly from the waters in the form of recreational hiking, photography, fishing, swimming, hunting, bird watching, boating, consumption of drinking water and scientific investigation. Additionally, these waters are an important resource for recreational and commercial fisheries.

Central Valley waterways also provide significant wildlife values important to the mission and purpose of the Petitioners. This wildlife value includes critical nesting and feeding grounds for resident water birds, essential habitat for endangered species and other plants and animals, nursery areas for fish and shellfish and their aquatic food organisms, and numerous city and county parks and open space areas.

CSPA's members reside in communities whose economic prosperity depends, in part, upon the quality of water. CSPA has actively promoted the protection of fisheries and water quality throughout California before state and federal agencies, the State Legislature and Congress and regularly participates in administrative and judicial proceedings on behalf of its members to protect, enhance, and restore declining aquatic resources.

CSPA member's health, interests and pocketbooks are directly harmed by the failure of the Regional Board to develop an effective and legally defensible program addressing discharges to waters of the state and nation.

6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONER REQUESTS.

Petitioners seek an Order by the State Board to:

Vacate Order No. R5-2006-0126 (NPDES No. CA0083348) and remand to the Regional Board with instructions prepare and circulate a new tentative order that comports with regulatory requirements.

Petitioners, however, request that the State Board hold in abeyance further action on this Petition for up to two years or further notice by Petitioners, whichever comes first. Petitioners, along with other environmental groups, anticipate filing one or more additional petitions for review challenging decisions by the Regional Board concerning the issues raised in this Petition in the coming months. For economy of the State Board and all parties, Petitioners will request the State Board to consolidate these petitions and/or resolve the common issues presented by these petitions by action on a subset of the petitions. Accordingly, Petitioners urge that holding this Petition in abeyance for now is a sensible approach.

7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION.

CSPA's arguments and points of authority are adequately detailed in the above comments, our 21 September 2006 and 24 November 2006 comment letters that were accepted into the record and our oral testimony presented to the Regional Board on 8 December 2006. Should the State Board have additional questions regarding the issues raised in this petition, CSPA will provide additional briefing on any such questions.

The petitioners believe that an evidentiary hearing before the State Board will not be necessary to resolve the issues raised in this petition. However, CSPA welcomes the opportunity to present oral argument and respond to any questions the State Board may have regarding this petition.

8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGERS, IF NOT THE PETITIONER.

A true and correct copy of this petition, without attachment, was sent electronically and by First Class Mail to Ms. Pamela Creedon, Executive Officer, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive #200, Rancho Cordova, CA 95670-6114.

A true and correct copy of this petition, without attachment, was sent to the Discharger in care of Mr. Carl Foreman, University of California Davis, Environmental Health and Safety Office, Davis, CA 95616.

9. A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD ACTED, OR AN EXPLANATION OF WHY THE PETITIONER COULD NOT RAISE THOSE OBJECTIONS BEFORE THE REGIONAL BOARD.

CSPA presented the issues addressed in this petition to the Regional Board in live oral testimony at the 8 December 2006 hearing on the Order or in comments submitted to

the Regional Board on 21 September 2006 and 24 November 2006 that were accepted into the record.

If you have any questions regarding this petition, please contact Bill Jennings at (209) 464-5067 or Mike Jackson at 530-283-1007.

Dated: 8 January 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is written in a cursive, flowing style.

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

Attachments:

- A. Order No. R5-2006-0126